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OFFICE OF PETITIONS

In re Application of
Cahill
Application No. 10/772,843
Filed: 4 February, 2004
Attorney Docket No. AOL0095

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: **DECISION ON PETITION**
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This is a decision on the papers considered as a petition under 37 C.F.R. §1.53, filed on 12 October and 8 November, 2004, and again on 14 January, 2005, requesting that the above-identified application, without drawings, be accorded a filing date of 4 February, 2004.

The petition is **GRANTED**.

The application was deposited on 4 February, 2004.

On 9 August, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Nonprovisional Application" (the 9 August Notice) stating, *inter alia*, that no filing date had been assigned because the application was deposited without drawings,¹ and requiring drawings be filed if necessary.

The 9 August Notice informed Petitioner that the alternatives available were to: (a) petition contending that the application was deposited with drawings; (b) petition contending that the application did not require drawing for the understanding of the subject matter sought to be patented; or (c) submit the missing drawings and accept the date of that submission as the filing date of the application.

¹ The provisions of 35 U.S.C. §113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

In response, Petitioner filed the instant papers, first on 12 October, 2004 (over a Monday, 11 October, 2004, certificate of mailing), and then again via FAX on 8 November, 2004, and 14 January, 2005, and included therein copies of a receipt card (see: MPEP §503),² and of drawing sheet numbered consecutively "1/3" through "3/3" containing Figs. 1 - 3.

ANALYSIS

A review of the file reveals that the application was deposited on 4 February, 2004, and that the date-stamped ("020404") receipt card states in pertinent part:

* * *

2. Utility Patent Application Transmittal (1 page)
3. Fee Transmittal (1 page, in duplicate)
4. (19) Page of Specification, Claims and Abstract
5. (3) Sheets of Formal Drawings

* * *

² The commentary at MPEP §503 provides in pertinent part:

* * *

RETURN POSTCARD

If a receipt for any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. To ensure the receipt of return receipt postcards, users must either: (A) purchase already stamped postcards from the United States Postal Service (USPS) or affix postage stamps to their postcards; or (B) if a postage meter is used, ensure that the meter postmark does not show the date. Any return receipt postcard containing a dated meter postmark may not be delivered by the USPS to the address provided on the postcard. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which a receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO.

Because Petitioner's receipt card adequately itemized the contents of the application on the receipt card, it is concluded that the application, including three (3) sheets of drawings were deposited with the Office on 4 February, 2004, and subsequently misplaced in the Office.

Accordingly, the application, as filed, is entitled to a filing date.

The "Notice of Incomplete Nonprovisional Application" mailed on 9 August, 2004, was sent in error and is hereby vacated to the extent that it stated that the application was incomplete.

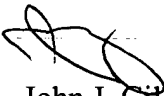
The petition is granted and the petition fee waived (the petition fee will be credited to Deposit Account 17-1445).

This application is released to OIPE for further processing with a filing date of 4 February, 2004, for the entire application and in particular for the 3 sheets of formal drawings, Figs. 1 - 3 as described in the specification, using:

- **the 19 pages of specification (description, claims and abstract) deposited on 4 February, 2004; and**
- **the 3 sheets of formal drawings deposited on 12 October, 2004; and**

with direction to OIPE to correct Office records and provide to Petitioner a corrected filing receipt setting forth a filing date of 4 February, 2004, and reflecting therein that 19 pages of specification (description, claims and abstract) and 3 sheets of formal drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 272-3214.



John J. Gillon, Jr.
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Office of Petitions